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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,113	09/26/2001	Peter Yau Tak Lin	8258X	3953

27752 7590 04/21/2005

THE PROCTER & GAMBLE COMPANY
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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,113

Applicant(s)

LIN ET AL.

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-12 and 38-41 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-5, 7-12 and 38-41 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Art Unit: 1761

Claims 1-5 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seiden et al.

Seiden et al disclose a emulsifier system comprising fatty acid monodiglycerides, 0-60% fatty acid esters of polyols and fatty acid mono-glyceride esters of polycarboxylic acids. The polyols are polyglycerols. The fatty acid esters of polyols have an average of from 4-14 hydroxyl groups wherein from about 10-66% of the hydroxyl groups are esterified and at least about 65% of the fatty acids are selected from the group consisting of C14-C20 saturated fatty acids. Polyol fatty acid ester made from palmitic and stearic acids are preferred for use. The polyglycerol esters must have an average of from about 2-12 glycerol units. The percentage of hydroxyl groups esterified with fatty acid is from about 10-66%. The polyglycerol esters contain less than 15% free polyglycerol. The emulsifier system also contain lecithin. (see col. 4 lines 26-68, col. 5 lines 1-16, and 49-50)

Seiden et al do not disclose the amount of polyglycerol ester claimed.

In absence of showing unexpected result or criticality, it would have obvious to vary the amounts of the components in the emulsifier system depending on the product the emulsifier will be used. It would have been obvious to one skilled in the art to determine through routine experimentation the amounts of each component of the emulsifier system which will give the most optimum properties to the product. Optimization is within the skill of one in the art. Applicant has not established unexpected result with the claimed amount. The specification discloses that the amount of polyglycerol ester varies from 40-99%.

Claims 1 and 38, 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Gruning et al.

Gruning et al disclose emulsifier comprising polyglycerol partial esters fatty acids. The esters are obtained by esterification of a polyglycerol mixture with fatty acids having 12-22 carbons; the degree of esterification is between 30-75%. Suitable polyglycerols have the following oligomer distribution: glycerol 0-30% by weight, diglycerol 15-40% by weight, triglycerol 10-55% by weight, tetraglycerol 2-25% by weight and pentaglycerol and higher components 0-15% by weight. (see col. 2 lines 13-23, col. 3 lines 25-30)

The reference discloses the limitations of the above claims. Claim 1 recites 100% polyglycerol ester which is the emulsifier disclosed by Gruning et al. The language of the claims does not exclude the esterification with polyfunctional carboxylic acids.

Claims 39 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over.

Gruning et al teach esterifying with fatty acids and the degree of esterification is within the range claimed. They do not disclose the specific amount of particular fatty acid. The specific amount of particular fatty acid can vary; it would have been obvious to one skilled in the art to vary the selection of the fatty acid depending on the type of fatty acids wanted in a particular product. It would have been within the skill of one in the art to determine the amount which would give the most optimum functionality.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 18, 2005


LIEN TRAN
PRIMARY EXAMINER

Group 1700